

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04-09-2006

CORAM :

THE HONOURABLE MR.JUSTICE A. KULASEKARAN

W.P. No. 19002 of 2003

and

W.P.M.P. No.23803/03, 17525 of 2006

Simpson and General Finance
Company Limited
rep. by its Director J. Sankaran
No.861, Anna Salai
Chennai - 600 002 ...Petitioner

Versus

1. The State of Tamil Nadu
rep. by Secretary to Government
Revenue Department
Fort St. George
Chennai - 600 009
2. The Assistant Commissioner (ULT)
Madhavaram
No.2, Vivek Nagar
Kolathur, Chennai - 99 .. Respondents

Petition filed under Article 226 of the Constitution of India
praying for a Writ of Certiorarified Mandamus as stated therein.

For Petitioner : Mr. R. Krishnamurthy, Sr. Counsel
for Mr. V. Ayyadurai

For Respondents : Mr. M. Dhandapani
Additional Govt. Pleader

ORDER

By consent of counsel on both sides, the main writ petition
itself is taken up for final disposal.

2. The prayer in this Writ Petition is for a Writ of
Certiorarified Mandamus calling for the records comprised in
proceedings bearing R.C. 5468/92/A on the file of the Assistant
Commissioner, ULT, Madhavaram/2nd respondent dated 13.03.2003 and

to quash the same and consequently forbear the respondents or any other Officers or Subordinates under the respondents from interfering with the lawful possession of the petitioner in respect of the lands declared as excess vacant land and measuring an extent of 1,38,970 sq.mts. and comprised in T.S. Nos. 2, 9, 10, 20, 21, 23 and 27 of Sembium, lands in T.S. Nos. 1/3 and 1/7 of Peravallur Village and lands in T.S. Nos. 843, 844 and 847 at Madhavaram Village in the guise of power under Tamil Nadu Urban Land (Ceiling and Regulation) Act 1978 as repealed by Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act, 1999.

3. The case of the petitioner is as follows:-

The petitioner is a company, which owns urban lands in T.S. Nos. 2, 9, 10, 20, 21, 23 and 27 of Sembium Village; T.S. Nos. 1/3 and 1/7 at Peravallur Village and T.S. Nos. 843, 844 and 847 at Madhavaram Village. The petitioner company applied for exemption of their excess lands held by it to an extent of 1,38,970 sq.mts. in the said Villages under Section 20 (1) (a) of Tamil Nadu Urban Land Ceiling Act, 1978, which was by then in force. The Government, considering the petitioner's bonafide request granted exemption. The said exemption was extended upto 17.03.2003 by G.O.Ms. No.215 dated 18.03.1998. It is stated that the petitioner company has fully utilised the excess vacant land at Sembium Village and Peravallur Village for laying the main approach roads, branch roads connecting the factories and its sister concerns in the industrial complex at Sembium and also installed electrical lines, telephone lines, storm water drainage and sewerage disposal channel on both sides of the road. There are two natural ponds lying within the exempted area which could not be used for construction of any building and the same was required for storing of water for the existing lands, for fire fighting and also for rain water harvesting. It is stated by the petitioner that they are fully utilising the excess land as set out in the Government Order issued by the Government of Tamil Nadu. In Madhavaram Village, in T.S. No. 843, 844 and 847 the excess vacant land has full of debris and sand and the petitioner company had spent substantial amount and constructed a compound wall running 2000 feet with 11 feet height. The Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act was passed, which came into force from 16.06.1999. While things are such as stated above, the Assistant Commissioner/second respondent herein has issued a notice dated 14.06.2000 calling upon the petitioner to appear for an enquiry on 28.06.2000 at 11.00 a.m. in his office with details of utilisation of the excess vacant land, which is exempted under Section 21 (1) of the Act. The second respondent also issued another communication dated 21.07.2000 stating that any violation of the conditions of exemption order would result in withdrawing such exemption and directed the petitioner to furnish the details as per Section 3 (3) of Act 20 of 1999. The petitioner also sent their reply dated 02.08.2000 stating that in view of Section 3 (1) (b) of the Repeal Act, 1999, no action be initiated under Section 21 (2) of the Act. Even after the said reply, the respondents, without passing any orders issued similar show cause notice and the petitioner also sent suitable reply denying the averments, however, the petitioner has chosen to challenge the notice dated 13.03.2003

issued by the second respondent in this writ petition, wherein it was mentioned thus:-

"In the G.O. cited, Government have granted exemption of the excess vacant land held by your company with a condition to utilise the exempted land within 5 years.

A report on the utilisation of the exempted land has to be sent to the Government. Hence, I request you to depute an authorised representative to appear before me for an enquiry on 01.04.2003 at 11.00 a.m.

1. 3 Copies of Sketches showing the utilisation of the land exempted.

2. 3 Copies of approved building plan for the building if any constructed after the issue of Government Order."

4. Mr. R. Krishnamurthy, learned Senior counsel appearing for the petitioner submitted as follows:-

The order granting exemption under the Act, 1978 becomes permanent in terms of Section 3 (1)(b) of Repeal Act, 1999. Section 21 (2) of Act 1978 has not been found place in the saving clause in Section 3 of Repeal Act, 1999. The power of the State Government to withdraw the exemption order, which has already been granted in exercise of power under Section 21 (1) of the Act, 1978 cannot be done in the absence of Section 21 (2) being saved. No proceeding can be initiated in exercise of the power conferred under Section 21 (2) of the Act, 1978 for withdrawal of exemption after the repeal Act, 1999 came into force. The notice dated 14.06.2000 issued by the second respondent, calling upon the petitioner to appear for an enquiry with details of utilisation of excess vacant land is not valid in law after the repeal Act came into force. As per the provisions of Repeal Act, any person who has been in possession on the date of the Repeal Act came into force i.e., 16.06.1999 falls outside the purview of Act, 1978. While so, persons who have been granted exemption on satisfaction of the bonafide requirement of such excess land cannot be placed in worst condition than the former. The notice dated 20.12.2000 similar to notice dated 14.06.2000 was issued by the second respondent to which the petitioner has also submitted his objection, without considering the same, it issued successive notice dated 04.01.2002 and also the impugned notice dated 13.03.2003 which are untenable and prayed for quashing the impugned notice. In support of this contention, the learned Senior counsel for the petitioner relied on the decision of a learned single Judge of this Court reported in (2004 Volume 3 Law Weekly 208 wherein in Para Nos. 4 and 5, it was held thus:-

"4. The learned counsel for the State relied upon Section 3 (1) (a) of the Tamilnadu Urban Land (Ceiling and Regulation) Repeal Act. The same has been already extracted above. In the present case, the possession of the land had

not been taken over by the State at any time. On the other hand, exemption had been granted. The impugned order indicates that the authority wanted to take action on the ground that the order of exemption has been violated by the petitioners and requested the Special Commissioner of Land Reforms to take appropriate action to acquire the land by giving proper instructions to the Assistant Commissioner. This clearly indicates that possession had not been taken and the authority wanted to proceed further for acquisition of the land under the Act. Since such Act had been repealed, there is no jurisdiction vested with the authorities to proceed further.

5. In this context the provision contains Section 3(2) of the Repealing Act makes it clear that if possession has not been taken over by the State Government or any person duly authorised by the State Government in this behalf or by competent authority; and any amount has been paid by the State Government with respect to such land, then, such land shall not be restored unless the amount paid, if any, has been refunded to the State Government. A combined reading of Section 3 (1) and 3 (2) of the Repealing Act makes it clear that unless possession had already been taken after payment of entire compensation, the State Government would not have jurisdiction to retain the land. On the other hand, if the compensation had been paid by the Government the person is allowed to take possession of the land provided to refund the amount received. Since in the present case neither possession had been taken nor compensation had been paid, there is no jurisdiction for the State Government or for any authority to pass impugned order. Hence, the impugned order is hereby set aside and the writ petition is allowed. There shall be no order as to costs."

5. Mr. Dhandapani, learned Additional Government Pleader appearing for the respondents submitted that the exemption is granted with certain conditions, which are not complied with by the petitioner, with the result, the excess land vest with the Government automatically, hence, the repeal Act cannot be made applicable. Section 21 (1) of the Act cannot be read separately and it should be read along with Section 21 (2) of the Act. Once Section 21 (1) is saved, the Section 21 (2) provided for consequential action in case of default can be exercised by the Government, accordingly, the impugned communication was sent by the second respondent and prayed for dismissal of the writ petition.

6. The first respondent issued G.O. Ms. No. 315 dated 18.03.1998 in favour of the petitioners extending the period of exemption of excess vacant land for five years with certain conditions. The second respondent sent several communications requesting the petitioner to appear before him with necessary records to prove compliance of the said conditions in G.O. Ms. No. 215 dated 18.03.1998. The petitioner sent replies referring to Repeal Act and stated that in view of the same, the conditions also lapsed. The impugned notice dated 13.03.2003 was sent by the second respondent again directing the petitioner to appear on 01.04.2003. On 01.04.2003, the petitioner has sent a reply reiterating the earlier stand of non-maintainability of the notice, thereafter, the present writ petition has been filed challenging only the notice dated 13.03.2003 of the second respondent.

7. Now, let us look into the provisions of Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act, 1999, which runs as follows:-

"3. (1) The repeal of the principal Act shall not affect -

(a) the vesting of any vacant land under sub-section (3) of Section 11, possession of which has been taken over by the State Government or any person, duly authorised by the State Government in this behalf or by the competent authority;

(b) the validity of any order granting exemption under sub-section (1) of Section 21 or any action taken thereunder.

(2) Where -

(a) any land is deemed to be vested in the State Government under sub-section (3) of Section 11 of the Principal Act but possession of which has not been taken over by the State Government or any person duly authorised by the State Government in this behalf or by the competent authority; and

(b) any amount has been paid by the State Government with respect to such land then, such land shall not be restored unless the amount paid, if any, has been refunded to the State Government.

4. All proceedings relating to any order made or purported to be made under the principal Act pending immediately before the commencement of this Act, before any Court, Tribunal or any authority shall abate;

provided that this section shall not apply to the proceedings relating to sections 12, 13, 14, 15, 15-B and 16 of the principal Act in so far as such proceedings are relatable to the land, possession of which has been taken over by the State Government or any person duly

authorised by the State Government in this behalf or by the competent authority."

8. In the case on hand, during the period the Act 1978 was in force, the petitioner's possession of vacant land was found excess, possession of which was not taken over by the State Government, but granted exemption. The case of the petitioner is that after the Repeal Act no action can be initiated to withdraw the exemption on the ground of non-compliance of conditions, since, Section 21 (2) is not saved by Repeal Act. The case of the respondents is that the Section 3 (1) (b) of Repeal Act states that the repeal of the Principal Act shall not affect the validity of any order granting exemption under Section 21 (1) or any action taken thereunder. In other words, the principal Act shall apply as if the Act has not been repealed, moreover, 'the action taken thereunder' will automatically include all actions taken after the grant of exemption, which include withdrawal of exemption and thereafter acquisition of vacant land. It is implied that repeal Act has empowered the Government to withdraw the exemption in case of violation and order for acquisition.

9. Section 3 (1) (a) of the Repeal Act says that the Repeal Act not affect vesting of any vacant land under sub-section (3) of Section 11, possession of which has been taken over by the State Government or any person, duly authorised by the State Government in this behalf or by the competent authority. Section 3 (1) (b) says that the Repeal Act not affect the validity of any order granting exemption under sub-section (1) of Section 21 or any action taken thereunder. Section 3 (2) (a) contemplates that the Repeal Act shall not affect where any land is deemed to be vested in the State Government under sub-section (3) of Section 11 of Act 1978 but possession of which has not been taken over by the State Government or any person duly authorised by the State Government in this behalf or by the competent authority. The Section 3 (2) (b) of the Act says that any amount has been paid by the State Government with respect to such land, then, such land shall not be restored unless the amount paid, if any, has been refunded to the State Government. A joint reading of Section 3 (1) and Section 3 (2) of Repeal Act would reveal that the compensation must have been paid and possession been taken pursuant to that. Section 3 (2) (b) also provides "then such land shall not be restored unless the amount paid, if any, shall be refunded to the State Government" which makes it clear that even in cases where compensation is paid by the Government, the owner is allowed to take possession of the land, but that can be done only after the amount is refunded to the State Government.

10. Section 21 (a) (b) and (c) of the Act speaks about granting exemption by the State Government, if it is satisfied, either on its own motion or otherwise and such exemption be granted subject to such conditions, if any, as may be specified in the order, when application of the provisions of 1978 Act cause undue hardship. Section 21 (2) contemplates that if at any point of time the State Government is satisfied that any of the conditions, subject to which any exemption under clauses (a) (b) and (c) of Sub-section (1) is granted is not complied with by any person, it

shall be competent for the State Government to withdraw by order such exemption after giving reasonable opportunity to such person for making representation against the proposed withdrawal and thereupon the provisions of this Act shall apply accordingly.

11. Section 3 (1) (b) of the 1999 Act contemplates that the Repeal Act shall not affect the validity of any order granting exemption under sub-section (1) of Section 21 or any "action taken thereunder". The words "validity of any order granting exemption" under Section 21 (1) of the Act 1978 denotes that the exemption and conditions imposed therein are unaffected by repeal Act. The words "action taken thereunder" means that all or any action if any taken against the person who obtained exemption for violation of such conditions prior to the repeal Act is not affected. In this case, admittedly, the State Government has not initiated any action prior to repeal Act. The impugned communication dated 13.03.2003 is one issued by the second respondent, that too, admittedly after the Repeal Act came into force.

12. "Saving clause" is used to preserve from destruction certain rights, remedies or privileges already existing not that it gives any new right. The assumption is that legislature enact laws with complete knowledge of existing laws pertaining to the same subject. The failure to add saving clause indicates that the intent was not to save the existing legislature. In this case, Section 21 (2) was not saved in the repeal Act.

13. In view of the fact that no action has been taken by the State Government for the alleged violation of conditions imposed while granting exemption prior to the repeal Act and also the fact that Section 21 (2) is not saved, it is not even open to the State Government to take any action for the alleged violation of conditions, even if any. The impugned notice is issued only by the second respondent, which is admittedly after the Repeal Act came into force. It is also a fact that neither compensation is paid to the petitioner nor the lands were taken prior to the Repeal Act. In view of the same, either the first respondent or the second respondent has jurisdiction to initiate any action against the petitioner's lands, hence, I hold that the impugned communication is illegal and without any authority of law and the same is quashed accordingly.

14. The writ petition is allowed. No costs.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

To

1. The Secretary to Government of Tamilnadu,
Revenue Department
Fort St. George
Chennai - 600 009
2. The Assistant Commissioner (ULT)
Madhavaram
No.2, Vivek Nagar
Kolathur, Chennai - 99

1 cc to Mr.V. Ayyadurai, Advocate, Sr. 40537

WP No. 19002 of 2003

GM (CO)
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